

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of)	RM-10586
Fixed and Mobile Broadband Access, Educational)	
and Other Advanced Services in the 2150-2162)	
and 2500-2690 MHz Bands)	
)	
Part 1 of the Commission's Rules – Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service)	
to Engage in Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74 of the)	WT Docket No. 02-68
Commission's Rules with Regard to Licensing)	RM-9178
in the Multipoint Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	
)	
Promoting Efficient Use of Spectrum Through)	WT Docket No. 00-230
Elimination of Barriers to the Development of)	
Secondary Markets)	

To: The Commission

**REPLY COMMENTS OF
POLAR COMMUNICATIONS MUTUAL AID CORPORATION**

Polar Communications Mutual Aid Corporation ("Polar"), by counsel, hereby submits Reply Comments regarding certain of the proposals and suggestions contained in the Further Notice of Proposed Rulemaking ("*FNPRM*") in the above-captioned proceeding.¹ In these Reply

¹ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-135, 19 FCC Rcd 14165 (2004). The Report and Order portion of the document will be defined herein as the "*BRS/EBS Order*." By *Order*, FCC 04-258,

Comments, Polar urges the Commission to ensure that the “substantial service” performance requirement tentatively adopted in the *FNPRM* will be defined to include “substantial service” occurring anywhere within the Basic Trading Area (“BTA”) during the existing license term, even if the BTA is subsequently partitioned or disaggregated and service is not thereafter provided in each of the partitioned areas or on all of the disaggregated spectrum.

Background

Polar was founded in 1952 and over the years has grown into a multi-faceted telecommunications company providing a host of multi-channel video, local telephone, long-distance and Internet access services to rural Americans in northeastern North Dakota and northwestern Minnesota.² In 2002, Polar acquired the Broadband Radio Service (“BRS”) authorization for the Grand Forks, North Dakota (BTA166) BTA along with other site-specific BRS licenses.³ The Grand Forks BTA comprises a vast area of more than 17,000 square miles with a population of almost 200,000 (2003 Census estimate). All 15 counties that comprise the Grand Forks BTA are “rural areas” under the Commission’s recently-adopted baseline definition.⁴

At present, 14 BRS stations are licensed to Polar, with sites at Grand Forks, North Dakota; Lakota, North Dakota; Robbin, Minnesota; and Thief River Falls, Minnesota. These sites provide wireless broadband service to approximately 380 subscribers, most of whom have

released October 29, 2004, the FCC modified the *BRS/EBS Order* to establish transitional technical rules and to clarify certain non-technical rules.

² For further information about Polar, see www.polarcomm.com. In addition to these Reply Comments, Polar is also a member of the BRS Rural Advocacy Group that has filed a Petition for Reconsideration seeking adoption of self-effectuating transition “opt-out” rules in this proceeding.

³ FCC records erroneously state that the holder of the Grand Forks BTA authorization is Phillip C. Merrill. Polar acquired the BTA authorization and other licenses from Grand Forks Wireless, L.L.C. on February 26, 2002 and notified the FCC of such consummation by letter dated March 8, 2002.

⁴ See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-166, released September 27, 2004, at ¶¶ 10-12.

no other choice for broadband services. Polar believes that its build-out and operations would comply with the BTA build-out requirements of former Section 21.930(c)(1) of the Commission's Rules.

Following its acquisition of the Grand Forks BRS licenses, Polar reached understandings with three nearby telephone companies to partition the Grand Forks BTA. As contemplated, the Grand Forks BTA would be partitioned into four separate geographic regions, with Polar retaining a portion of the BTA and each of the other three companies holding a Partitioned Service Area ("PSA") authorization for distinct areas that approximate their local telephone service areas.

The Commission's suspension of the Section 21.930(c)(1) build-out requirements, and the lack of any "replacement" standard, creates uncertainty for Polar and other BRS licensees. This is particularly true with respect to the build-out requirements for PSAs, where the build-out for the entire BTA would comply with Section 21.930(c)(1), but the build-out for each PSA may not. Polar submits these Reply Comments to urge the Commission to ensure that, in cases where the holder of a BTA authorization provided "substantial service" in the BTA at any time during the existing license term, such service will be deemed "substantial service" for all PSAs resulting from the partition of the BTA.

Discussion

An overwhelming number of commenters in this proceeding strongly supported the Commission's tentative adoption of a "substantial service" performance requirement for BRS and Educational Broadband Service ("EBS") licensees.⁵ Commenters agree with the

⁵ See, e.g., Comments on Further Notice of Proposed Rulemaking of The Wireless Communications Association International, Inc. filed January 10, 2005 ("WCA Comments") at pp. 2-17; Comments of BellSouth Corporation, BellSouth Wireless Cable, Inc. and South Florida Television, Inc. filed January 10, 2005 at p. 4 ("BellSouth Comments"); Comments of Sprint Corporation filed January 10, 2005 at p. 7; Comments of Nextel Communications

Commission that the “substantial service” approach would promote market-oriented spectrum transitions by giving service providers flexibility to tailor their business plans to local market conditions, thus facilitating speedier transitions and deployments.⁶ Polar joins with the Commission and the industry in supporting these goals and believes that the “substantial service” standard and the traditional “safe harbors” governing wireless services should enhance operators’ ability – and flexibility – to bring new wireless services to current and future customers. In addition, Polar concurs with WCA that the Commission should renew any BRS authorization where the license holder satisfied the build-out requirements under former Section 21.930(c)(1).⁷

Polar also agrees with those commenters that wisely assert the Commission should clearly state that satisfaction of any “safe harbor” at any time during the existing license term constitutes “substantial service.”⁸ Not only would such a determination give proper credit to the service history of licensees prior to suspension of the build-out rules – and, in the case of Polar, thereafter – but it would also be consistent with the Commission’s decision to eliminate rules requiring license forfeiture upon discontinuance of service. In that context, the Commission has stated that “[o]ur market-driven service goals will not be reached if licensees are forced to continue providing obsolete services solely to preserve their authorizations. We see no public interest benefit to preserving non-viable services solely because renewal approaches.”⁹ If licensees will not be penalized for discontinuing service, it follows that the service they provided

filed January 10, 2005 at p. 2; Comments of Digital Broadcast Corporation filed January 10, 2005 at p. 2; Comments of Grand Wireless Company, Inc. – Michigan filed January 10, 2005 at p. 1; Comments of Cheboygan-Otsego-Presque Isle Educational Service District and PACE Telecommunications Consortium filed January 10, 2005 at p. 2; Comments of C&W Enterprises, Inc. filed January 10, 2005 at p. 2; Comments of SpeedNet, L.L.C. filed January 10, 2005 at p. 2; Comments of Wireless Direct Broadcast System filed January 10, 2005 at p. 2.

⁶ See generally *BRS/EBS Order* at ¶¶ 320-332.

⁷ See WCA Comments at n. 33.

⁸ See BellSouth Comments at pp. 10-12; WCA Comments at pp. 10-14.

⁹ See *BRS/EBS Order* at ¶ 239.

prior to discontinuing service – or continuing service, as is the case with Polar – should qualify as “substantial service.”

In order for the “substantial service” rules be fairly applied, however, they must account for cases where, for example, a BTA authorization holder constructed facilities that complied with the build-out requirements of former Section 21.930(c)(1) or demonstrated “substantial service” with respect to the entire BTA, but may not be able to meet those requirements for each PSA resulting from the partitioning. Some resulting PSAs thus may lack operating facilities, even as service continues in one or more of the other PSAs.

To accommodate these situations, the Commission should take an additional step. Polar urges the Commission to adopt a rule stating that for any BTA that has been partitioned or disaggregated during the existing license term, the “substantial service” standard can be met by demonstrating that “substantial service” was provided anywhere in the BTA at some point during the license term.¹⁰ Where the holder of a BTA authorization complied with the now-suspended build-out requirements, it would be entirely unfair and contrary to Commission policy for licensees of the resulting PSAs potentially to face denial of their license renewal applications because service was not provided within a resulting PSA.

The suspension of the build-out requirements – without any replacement standard or specific provisions for partitioned BTAs – has created uncertainty for Polar and the other three parties, who cannot be assured that Polar’s existing operations will be sufficient for them to obtain renewal of PSA authorizations that would result from the partition. Because the risk cannot be assessed with a reasonable degree of certainty, Polar has been unable to complete the partitioning transaction. In turn, the ultimate holders of the PSA authorizations have not been able to invest in further construction or undertake any operational activities, to the detriment of

¹⁰ See BellSouth Comments at n. 39.

rural Americans in these underserved areas who desire use of BRS spectrum for new wireless services. By specifically adopting Polar's proposal, Polar and other holders of BTA authorizations will gain much-needed certainty on the build-out requirements that will apply to PSAs and will be better able to proceed with secondary market transactions and build-out of new wireless systems.

Conclusion

In light of the foregoing, Polar Communications Mutual Aid Corporation urges the Commission to confirm that for any BTA that has been partitioned during the existing license term, the "substantial service" standard may be met by demonstrating that "substantial service" was provided anywhere in the BTA at some point during the license term, regardless of whether such service was provided in each resulting PSA.

Respectfully submitted,

**POLAR COMMUNICATIONS
MUTUAL AID CORPORATION**

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By: /s/ Stephen E. Coran

Stephen E. Coran
Jonathan E. Allen
Rini Coran, PC
1501 M Street, N.W., Suite 1150
Washington, D.C. 20005
(202) 463-4310

Its Attorneys